

the legislature is prohibited from declaring to be rules of law, the judiciary cannot assume and apply, as such. These principles of this court, by which a creditor is prevented from obtaining satisfaction from the estate of his deceased debtor, in certain cases, where others have been bound for the payment of the same debt, it is evident, do, in effect, deprive the creditor of at least a part, and very often of the whole of his security; they do most manifestly, in a material and essential manner, impair the obligation of the contract; and are, therefore, in direct hostility with the general principles of our code as taken from that of England, and with the spirit, if not the very letter of this provision of the constitution of the United States.

But according to these principles the creditor, it is obvious, from the very nature of things, may not merely have his security materially cut down and grievously impaired, but altogether destroyed. The explanation whether the deceased is principal or surety, and the proof of insolvency is almost always the occasion of embarrassment and delay. Notwithstanding which it is declared, that the claims having been then barred by the statute of limitation, as against others, forms of itself no ground for letting the creditor in to obtain any satisfaction from the estate of the deceased. And if it should not be barred by limitation, still the attempt to recover satisfaction from the other joint debtors may fail, from a variety of causes, against which no diligence of the creditor can guard. The other debtors may be in desperate and rapidly sinking circumstances although then not reputed to be insolvent. They may be residents of other states, or remote places, from which it may be difficult or impossible to obtain correct information as to their pecuniary condition; or they may be dead and their representatives so numerous and dispersed as that the creditor may find it impracticable within any reasonable time, to procure any kind of proof of their insolvent condition.

Upon the whole, I have been long satisfied, that these principles of this court in relation to the distribution of the real assets of deceased debtors operate hardly, injuriously, and perniciously upon the rights and interests of creditors. Yet as it appears, that they have been steadily continued in full force for more than thirty years past; and as I found them firmly rooted and in full vigour when I came here, I shall therefore continue to acquiesce under their operation; leaving it to other and higher authority to correct the evil, if it should be so considered, in such manner as may be deemed most proper.